

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ACE GALVANIZING, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 84-314

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a civil penalty of \$1,000 for the alleged violation of Section 9.11(a) of Puget Sound Air Pollution Control Agency's Regulation I, came on for hearing in Seattle on March 25, 1985, before the Pollution Control Hearings Board, Wick Dufford (presiding) and Lawrence J. Faulk.

Appellant Ace Galvanizing, Inc., appeared through its manager Michael Buckland. Respondent Puget Sound Air Pollution Control Agency was represented by its attorney Keith D. McGoffin. Reporter Donna K. Woods reported the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined. Fro
2 the testimony heard and exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant Ace Galvanizing, Inc., is located at 429 South 96th
6 Street in an industrialized Seattle neighborhood known as South Park.
7 In its galvanizing operations the company uses materials containing
8 zinc and ammonium compounds. The site is in a non-attainment area for
9 national ambient air quality standards for particulates.

10 II

11 Respondent Puget Sound Air Pollution Control Agency (PSAPCA) is a
12 municipal corporation with responsibility to conduct a program of air
13 pollution prevention and control in a multi-county area which includes
14 the site of appellant's plant.

15 III

16 On the morning of August 31, 1984, an inspector for PSAPCA while
17 responding to a complaint observed and photographed visible emissions
18 coming from the roof monitors and open door at the Ace Galvanizing
19 Plant on South 96th Street. The emissions were blue in color; the
20 wind was blowing out of the south at a low velocity; the weather was
21 generally clear; the temperature was about 60°F.

22 IV

23 After making these observations, the inspector contacted the
24 complainant at her place of work, Varitec, Inc., located at 420 South
25 96th Street, several hundred feet due north of the Ace Galvanizing

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1 plant. The complainant's work area is inside a loading dock where the
2 doors are frequently open to allow customers to pick up and load
3 purchases.

4 In this work area the inspector detected fumes with an acidic
5 quality which caused her to cough and which irritated her throat. In
6 the fumes an ammonia odor was noticed.

7 The inspector also observed grey dust which had collected on
8 merchandise stored outside the complainant's office door. She
9 collected a sample of the particulate fallout and, eventually,
10 transferred it to PSAPCA laboratory technicians for analysis.

11 V

12 The complainant signed a formal complaint form identifying Ace
13 Galvanizing as the source of heavy smoke with metallic odor and taste
14 accompanied by moderate fallout occurring daily in the morning over a
15 period of months. She said that eye irritation, nausea and headaches
16 had resulted. She later executed a sworn statement that she saw smoke
17 coming from Ace Galvanizing on the morning of August 31, 1984, and
18 experienced the same metallic odor, taste and fallout. She said she
19 experienced eye irritation and nausea on this occasion.

20 VI

21 After visiting the complainant, PSAPCA's inspector contacted the
22 Plant Superintendent on the job at Ace Galvanizing and issued to him a
23 Notice of Violation of PSAPCA Regulation I, Section 9.11(a).

24 VII

25 Subsequent laboratory analysis of the particulate sample collected

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1 at Varitec by PSAPCA's inspector revealed that both zinc and ammonium
2 compounds were present.

3 VIII

4 PSAPCA's inspector did not perform a formal plume evaluation for
5 opacity of the emissions from Ace Galvanizing. The optimum conditions
6 for smoke reading were not present. However, she estimated an opacity
7 greater than 20 percent.

8 IX

9 On October 19, 1984, PSAPCA issued Notice and Order of Civil
10 Penalty No. 6160, assessing \$1,000 for the events of August 31, 1984.
11 Appellant filed its notice of appeal with this Board on November 16,
12 1984.

13 X

14 Respondent's manager Mr. Buckland, did not contest any of the
15 evidence regarding the presence of smoke and fallout at Varitec and
16 the physical effects experienced. However, he stated that he did not
17 believe the problem was coming from his company and suggested several
18 other zinc and ammonium sources in the neighborhood which might have
19 been the source.

20 Mr. Buckland, was not present during the incident in question.
21 PSAPCA's inspector testified that she actually saw the emissions from
22 Ace Galvanizing and observed their movement to Varitec. She also said
23 that the other sources suggested were not, according to her
24 observation, the cause of the problem.

1 XI

2 The Board finds that emissions from Ace Galvanizing, Inc., reached
3 the Varitec loading dock on August 31, 1984, and caused the distress
4 and ill effects identified by the complainant and PSAPCA's inspector.

5 XII

6 PSAPCA introduced evidence of prior enforcement actions against
7 Ace Galvanizing. The Agency's record shows that since 1975, a total
8 of 15 notices of violation for opacity violations have been issued.
9 Twelve of these have resulted in civil penalties, three of which were
10 appealed. Of the appeals, one was tried to this Board and affirmed;
11 two were settled on the basis of payment of agreed amounts.

12 The instant case is the first time the appellant has been cited
13 for a violation of Section 9.11(a).

14 XIII

15 PSAPCA, pursuant to RCW 43.21B.260, has filed with this Board a
16 certified copy of its Regulation I (and all amendments thereto) which
17 is noticed.

18 XIV

19 Any Conclusion of Law which is deemed a Finding of Fact is hereby
20 adopted as such.

21 From these Findings of Fact the Board comes to these

22 CONCLUSIONS OF LAW

23 I

24 The Board has jurisdiction over these parties and these matters.
25 Chapters 43.21B and 70.94 RCW.

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II

PSPACA Regulation I, Section 9.11(a) states:

It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with the enjoyment of life and property.

III

We conclude that emissions caused by Ace Galvanizing, Inc., on the morning of August 31, 1984, had such effects on persons and property as to violate Section 9.11(a).

IV

The notice of penalty at issue asserts violations of both Section 9.11(a) and WAC 173-400-040(5). Since we decide that Section 9.11(a) was violated, we need not consider WAC 173-400-040(5).

V

Section 3.29 of Regulation I has been amended to provide a maximum civil penalty of \$1,000. This amendment was adopted on May 10, 1984, and was in effect when the violation at issue occurred and when the penalty relating to it was imposed.

VI

The appropriateness of the amount of a civil penalty is a matter involving consideration of factors bearing on reasonableness. These include;

a.) the nature of the violation;

b.) the prior behavior of the violator;

c.) actions taken after the violation to solve the problem.

See Puget Chemco, Inc. v. PSAPCA, PCHB No. 84-245, et al.

VII

On the basis of the record before us, we are convinced that the penalty imposed in this instance is reasonable.

The violation was of a standard relating to environmental harm, not a technology-based emission limitation. Such harm, in fact, occurred, and the occurrence was in a non-attainment area for national standards designed to protect health.

The prior behavior of the violator indicates at least a ten-year history of difficulty in maintaining compliance with related air pollution control regulations. The record does not disclose that these problems have been solved or that the violator took any particular action to prevent a recurrence of the events at issue.

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such

From these Conclusions of Law the Board enters this

ORDER

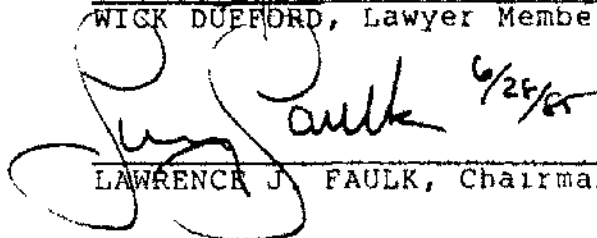
PSAPCA's Civil Penalty No. 6160 issued to Ace Galvanizing, Inc.,
is affirmed.

DONE this 28th day of June, 1985.

POLLUTION CONTROL HEARINGS BOARD



WICK DUEFORD, Lawyer Member

 6/28/85

LAWRENCE J. FAULK, Chairman